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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 **MARK E. HAMANN,** C 07-06008 TEH (PR)
14 Petitioner,
15 **v.** ANSWER
16 **KEN CLARK, Warden,**
17 Respondent.
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19 Respondent Ken Clark, Warden of the California Substance Abuse Treatment Facility and
20 State Prison – Corcoran, in Corcoran, California, provides this answer to the Petition For Writ of
21 Habeas Corpus.

22 **I**

23 **VALID JUDGMENT**

24 Petitioner, Mark E. Hamann, California Department of Corrections number F-17150, is
25 lawfully in the custody of the California Department of Corrections at the California Substance
26 Abuse Treatment Facility and State Prison – Corcoran, in Corcoran, California pursuant to a valid
27 judgment and commitment of the Superior Court of Marin County, entered February 21, 2006, in
28 case number SC143245A. Exh. A, Clerk's Transcript (CT) in case A113181, CT 148-149.

1 Petitioner entered a negotiated plea of guilty to mayhem and false imprisonment by violence. Cal.
 2 Penal Code, §§ 203, 236. On February 21, 2006, the court sentenced petitioner to state prison for
 3 a term of 4 years, 8 months. CT 148-149. Petitioner appealed, raising a single issue, that his
 4 consecutive sentence was precluded by California Penal Code section 654, prohibiting multiple
 5 punishment for a single criminal act or omission. Exh. C1, Appellant's Opening Brief, *People v.*
 6 *Hamann*, A113181. The People responded. Exh. C2, Respondent's Brief, *People v. Hamann*,
 7 A113181. Petitioner filed a reply. Exh. C3, Appellant's Reply Brief, *People v. Hamann*, A113181.
 8 His judgment was affirmed by the California Court of Appeal on February 2, 2007. Exh. C4,
 9 Opinion, *People v. Hamann*, A113181. Petitioner did not seek review.

10 Petitioner then began pursuing the three issues presented here, ineffective assistance of
 11 trial counsel, prosecutorial misconduct, and failure to inform of the consequences of the plea. He
 12 filed a petition for writ of habeas corpus in the Marin County Superior Court on March 22, 2007,
 13 which was denied on June 6, 2007, reconsidered and denied again on July 25, 2007. Exhs. F1, F2,
 14 F3, *Mark Edward Hamann v. Board of Prison Terms*, SC152606A, Petition and Orders Denying
 15 Petition For Writ Of Habeas Corpus.

16 Petitioner filed a petition for writ of habeas corpus on August 13, 2007, in the California
 17 Court of Appeal which was denied on August 16, 2007. Exh. E, *In re Mark E. Hamann*, A118714.
 18 Petitioner filed a petition for review in the California Supreme Court on August 27, 2007, directed
 19 to the denial by the Court of Appeal denial of his Petition for Writ of Habeas Corpus. Review was
 20 denied on October 17, 2007. Exh. D, *In re Mark E. Hamann*, S155920.

21 Petitioner filed the present petition on November 28, 2007. The order to show cause
 22 issued on March 27, 2008.

23 II

24 EXHAUSTION AND PROCEDURAL DEFAULT ISSUES

25 Petitioner's three claims are: (1) trial counsel provided ineffective assistance of counsel
 26 in violation of the Sixth Amendment in advising him concerning his plea; (2) his due process and
 27 fair trial rights were violated when false evidence was provided at the sentencing hearing; and (3)
 28 the trial court failed to advise him in advance of the plea that he would be subject to only 15 percent

1 good time credit reduction as a consequence of entering a plea of guilty to mayhem. Petitioner has
2 exhausted his state remedies by raising these issues by petitions for writ of habeas corpus in the
3 Marin County Superior Court, the California Court of Appeal, and the California Supreme Court.

4 **III**

5 **SPECIFIC DENIALS**

6 Respondent specifically denies petitioner was denied any rights to due process, to a fair
7 trial, or to the assistance of counsel. Petitioner was not denied any rights under the Constitution or
8 the laws of the United States and is not entitled to a discharge from his present confinement.

9 **IV**

10 **INCORPORATION BY REFERENCE**

11 Respondent incorporates by reference as though fully set forth here, the factual statements
12 material to the issues herein which are contained in the accompanying memorandum of points and
13 authorities.

14 **V**

15 **SUPPORTING RECORD LODGED**

16 Respondent is lodging clerk's and reporter's transcripts of petitioner's trial together with
17 the briefs, opinions, and orders filed in petitioner's state appeal. Respondent is also lodging the
18 petitions and orders in petitioner's relevant state habeas corpus actions. Respondent is not aware
19 of any relevant transcripts or other pertinent documents not so lodged.

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CONCLUSION

Accordingly, respondent respectfully requests that the petition for writ of habeas corpus be denied.

Dated: September 5, 2008

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of the State of California

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Chief Assistant Attorney General

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/s/ Catherine A. Rivlin

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: ***Mark Hamann v. Ken Clark***

No.: **C 07-06008 THE (PR)**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On September 5, 2008, I served the attached:

- 1. ANSWER;**
- 2. MEMORANDUM OF POINTS AND AUTHORITIES IN
OPPOSITION TO THE PETITION FOR WRIT OF HABEAS CORPUS; and**
- 3. NOTICE OF LODGING AND INDEX OF EXHIBITS**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Mark E. Hamann
#:F-17150
California State Prison at Corcoran
CSATF/SP, F1-246
P.O. Box 5248
Corcoran, CA 93212

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on September 5, 2008, at San Francisco, California.

J. Espinosa

Declarant

/s/ J. Espinosa

Signature